

AMENDED IN SENATE JUNE 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 261

Introduced by Assembly Member Salas

February 11, 2009

An act to amend Sections 49076 and 49076.5 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 261, as amended, Salas. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to those access to pupil record provisions to conform them to federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49076 of the Education Code is amended
2 to read:
3 49076. A school district is not authorized to permit access to
4 pupil records to a person without written parental consent or under
5 judicial order except as set forth in this section and as permitted
6 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
7 of Federal Regulations:

1 (a) Access to those particular records relevant to the legitimate
2 educational interests of the requester shall be permitted to the
3 following:

4 (1) School officials and employees of the district, members of
5 a school attendance review board established pursuant to Section
6 48321, and a volunteer aide, 18 years of age or older, who has
7 been investigated, selected, and trained by a school attendance
8 review board for the purpose of providing followup services to
9 pupils referred to the school attendance review board, provided
10 that the person has a legitimate educational interest to inspect a
11 record.

12 (2) Officials and employees of other public schools or school
13 systems, including local, county, or state correctional facilities
14 where educational programs leading to high school graduation are
15 provided or where the pupil intends to or is directed to enroll,
16 subject to the rights of parents as provided in Section 49068.

17 (3) Authorized representatives of the Comptroller General of
18 the United States, the Secretary of Education, and state education
19 officials, or their respective designees, or the United States Office
20 of Civil Rights, where the information is necessary to audit or
21 evaluate a state or federally supported education program or
22 pursuant to a federal or state law, provided that except when
23 collection of personally identifiable information is specifically
24 authorized by federal law, data collected by those officials shall
25 be protected in a manner that will not permit the personal
26 identification of pupils or their parents by other than those officials,
27 and personally identifiable data shall be destroyed when no longer
28 needed for the audit, evaluation, and enforcement of federal legal
29 requirements.

30 (4) In accordance with Section 99.31 of Title 34 of the Code of
31 Federal Regulations, state and local officials or authorities to whom
32 the information specifically is allowed to be reported or disclosed
33 pursuant to state law adopted prior to November 19, 1974, and
34 state and local officials or authorities to whom the information is
35 specifically allowed to be reported or disclosed pursuant to state
36 law adopted after November 19, 1974.

37 (5) Parents of a pupil 18 years of age or older who is a dependent
38 as defined in Section 152 of the Internal Revenue Code of 1986.

39 (6) A pupil 16 years of age or older, or who has completed grade
40 10, and who requests access.

1 (7) A district attorney's office that is participating in or
2 conducting a truancy mediation program pursuant to Section
3 48263.5, or Section 601.3 of the Welfare and Institutions Code,
4 or participating in the presentation of evidence in a truancy petition
5 pursuant to Section 681 of the Welfare and Institutions Code. For
6 purposes of this paragraph, a truancy mediation program under
7 Section 48263.5 concerns the juvenile justice system and the
8 system's ability to effectively serve, prior to adjudication, the pupil
9 whose records are released, and the disclosure of those records is
10 permitted pursuant to, and consistent with, Section 99.38 of Title
11 34 of the Code of Federal Regulations as that section exists on
12 January 1, 2009.

13 (8) A prosecuting agency for consideration against a parent or
14 guardian for failure to comply with the Compulsory Education
15 Law (Chapter 2 (commencing with Section 48200)) or with
16 Compulsory Continuation Education (Chapter 3 (commencing
17 with Section 48400)).

18 (9) A probation officer or district attorney's office for the
19 purposes of conducting an investigation for juvenile adjudication,
20 declaring a person a ward of the court or involving a violation of
21 a condition of probation, where the records are relevant to the
22 legitimate educational interests of the pupil, as these investigations
23 concern the juvenile justice system and the system's ability to
24 effectively serve, prior to adjudication, the pupil whose records
25 are released, and disclosure of those records is permitted pursuant
26 to, and consistent with, Section 99.38 of Title 34 of the Code of
27 Federal Regulations as that section exists on January 1, 2009. Law
28 enforcement records may be released without consent, a subpoena,
29 or a court order.

30 (10) A judge or probation officer for the purpose of conducting
31 a truancy mediation program for a pupil, or for purposes of
32 presenting evidence in a truancy petition pursuant to Section 681
33 of the Welfare and Institutions Code. For purposes of this
34 paragraph, a truancy mediation program under Section 48263.5
35 concerns the juvenile justice system and the system's ability to
36 effectively serve, prior to adjudication, the pupil whose records
37 are released, and the disclosure of those records is permitted
38 pursuant to, and consistent with, Section 99.38 of Title 34 of the
39 Code of Federal Regulations as that section exists on January 1,
40 2009. The judge or probation officer shall certify in writing to the

1 school district that the information will be used only for truancy
2 purposes. A school district releasing pupil information to a judge
3 or probation officer pursuant to this paragraph shall inform, or
4 provide written notification to, the parent or guardian of the pupil
5 within 24 hours of the release of the information.

6 (11) A county placing agency for the purpose of fulfilling the
7 requirements of the health and education summary required
8 pursuant to Section 16010 of the Welfare and Institutions Code or
9 for the purpose of fulfilling educational case management
10 responsibilities required by the juvenile court or by law and to
11 assist with the school transfer or enrollment of a pupil. School
12 districts, county offices of education, and county placing agencies
13 may develop cooperative agreements to facilitate confidential
14 access to and exchange of the pupil information by electronic mail,
15 facsimile, electronic format, or other secure means.

16 (b) School districts may release information from pupil records
17 to the following:

18 (1) Appropriate persons in connection with an emergency if the
19 knowledge of the information is necessary to protect the health or
20 safety of a pupil or other persons.

21 (2) Agencies or organizations in connection with the application
22 of a pupil for, or receipt of, financial aid. However, information
23 permitting the personal identification of a pupil or his or her parents
24 may be disclosed only as may be necessary for purposes as to
25 determine the eligibility of the pupil for financial aid, to determine
26 the amount of the financial aid, to determine the conditions that
27 will be imposed regarding the financial aid, or to enforce the terms
28 or conditions of the financial aid.

29 (3) The county elections official, for the purpose of identifying
30 pupils eligible to register to vote, and for conducting programs to
31 offer pupils an opportunity to register to vote if the pupil's parents,
32 or in the case of pupils 18 years of age or older, have not opted
33 out of participation in this voter registration activity. The
34 information, however, shall not be used for any other purpose or
35 given or transferred to any other person or agency.

36 (4) Accrediting associations in order to carry out their
37 accrediting functions.

38 (5) Organizations conducting studies for, or on behalf of,
39 educational agencies or institutions for the purpose of developing,
40 validating, or administering predictive tests, administering student

1 aid programs, and improving instruction, if the studies are
2 conducted in a manner that will not permit the personal
3 identification of pupils or their parents by persons other than
4 representatives of the organizations and the information will be
5 destroyed when no longer needed for the purpose for which it is
6 obtained.

7 (6) (A) (i) Officials and employees of private schools or school
8 systems where the pupil is enrolled or intends to enroll, subject to
9 the rights of parents as provided in Section 49068. This information
10 shall be in addition to the pupil's permanent record transferred
11 pursuant to Section 49068.

12 (ii) A person, persons, agency, or organization permitted access
13 to pupil records pursuant to this section shall not permit access to
14 any information obtained from those records by any other person,
15 persons, agency, or organization without the written consent of
16 the pupil's parent.

17 (B) However, this paragraph does not require prior parental
18 consent when information obtained pursuant to this section is
19 shared with other persons within the educational institution, agency,
20 or organization obtaining access, so long as those persons have a
21 legitimate educational interest in the information pursuant to
22 Section 99.31 of Title 34 of the Code of Federal Regulations.

23 (c) Notwithstanding any other law, a school district, including
24 a county office of education or superintendent of schools, may
25 participate in an interagency data information system that permits
26 access by authorized school officials to a computerized database
27 maintained by a noneducational governmental agency to
28 information or records that are nonprivileged, and where release
29 is authorized as to the requesting agency under state or federal law
30 or regulation, if each of the following requirements is met:

31 (1) Each agency and school district shall develop security
32 procedures or devices by which unauthorized personnel cannot
33 access data contained in the system.

34 (2) Each agency and school district shall develop procedures
35 or devices to secure privileged or confidential data from
36 unauthorized disclosure.

37 (3) Each school district shall comply with the access log
38 requirements of Section 49064.

1 (4) The right of access granted shall not include the right to add,
2 delete, or alter data without the written permission of the agency
3 holding the data.

4 (5) An agency or school district shall not make public or
5 otherwise release information on an individual contained in the
6 database where the information is protected from disclosure or
7 release as to the requesting agency by state or federal law or
8 regulation.

9 (6) A school district, including a county office of education or
10 superintendent of schools, shall not disclose ~~information personally~~
11 *identifiable pupil information from educational records* into this
12 interagency data information system *unless permitted by Part 99*
13 *(commencing with Section 99.1 of Title 34 of the Code of Federal*
14 *Regulations).*

15 SEC. 2. Section 49076.5 of the Education Code is amended to
16 read:

17 49076.5. (a) Notwithstanding Section 49076, each school
18 district shall release the information it has specific to a particular
19 pupil's identity and location that relates to the transfer of that
20 pupil's records to another school district within this state or any
21 other state or to a private school in this state to a designated peace
22 officer, upon his or her request, when a proper police purpose
23 exists for the use of that information. As permitted by Part 99
24 (commencing with Section 99.1) of Title 34 of the Code of Federal
25 Regulations, the designated peace officer, or law enforcement
26 agency, shall show the school district that the peace officer or law
27 enforcement agency has obtained prior written consent from one
28 parent, or provide information indicating that there is an emergency
29 in which the information is necessary to protect the health or safety
30 of the pupil, or that the peace officer or law enforcement agency
31 has obtained a lawfully issued subpoena or a court order.

32 (b) In order to protect the privacy interests of the pupil, a request
33 to a school district for pupil record information pursuant to this
34 section shall meet the following requirements:

35 (1) For purposes of this section, "proper police purpose" means
36 that probable cause exists that the pupil has been kidnapped and
37 that his or her abductor may have enrolled the pupil in a school
38 and that the agency has begun an active investigation.

39 (2) Only designated peace officers and federal criminal
40 investigators and federal law enforcement officers, as defined in

1 Section 830.1 of the Penal Code, whose names have been submitted
2 to the school district in writing by a law enforcement agency, may
3 request and receive the information specified in subdivision (a).
4 Each law enforcement agency shall ensure that each school district
5 has at all times a current list of the names of designated peace
6 officers authorized to request pupil record information.

7 (3) This section does not authorize designated peace officers to
8 obtain any pupil record information other than that authorized by
9 this section.

10 (4) The law enforcement agency requesting the information
11 shall ensure that at no time shall information obtained pursuant to
12 this section be disclosed or used for a purpose other than to assist
13 in the investigation of suspected criminal conduct ~~of~~ *or* kidnapping.
14 A violation of this paragraph shall be punishable as a misdemeanor.

15 (5) The designated peace officer requesting information
16 authorized for release by this section shall make a record on a form
17 created and maintained by the law enforcement agency that shall
18 include the name of the pupil about whom the inquiry was made,
19 the consent of a parent having legal custody of the pupil or a legal
20 guardian, the name of the officer making the inquiry, the date of
21 the inquiry, the name of the school district, the school district
22 employee to whom the request was made, and the information that
23 was requested.

24 (6) Whenever the designated peace officer requesting
25 information authorized for release by this section does so in person,
26 by telephone, or by some means other than in writing, the officer
27 shall provide the school district with a letter confirming the request
28 for pupil record information prior to any release of information.

29 (7) No school district, or officer or employee of the school
30 district, shall be subject to criminal or civil liability for the release
31 of pupil record information in good faith as authorized by this
32 section.